

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP
One North Broadway, Suite 1502
White Plains, New York 10601
(914) 328-0404

Attorneys of Record:

Greg A. Riolo (GR 1634)

Michael A. Frankel (MF 9712)

-----X
ISHA WESTERN,

Plaintiff,

07 Civ. 6247 (PKC)

-against-

AMERIPATH, INC.,

Defendant.

-----X

**AFFIRMATION OF MICHAEL A. FRANKEL,
ESQ. IN SUPPORT OF DEFENDANT
AMERIPATH NEW YORK, INC.'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT,
WITH PREJUDICE, FOR FAILURE TO
PROSECUTE**

MICHAEL A. FRANKEL, an attorney duly admitted to practice before this Court and the courts of the State of New York, hereby affirms under penalty of perjury that the following statements are true:

1. I am an attorney with the law firm of Jackson Lewis LLP, counsel for Defendant Ameripath New York, Inc. ("Ameripath" or "Defendant") in the above-entitled matter.

2. I am fully familiar with the facts and circumstances contained herein, based on a review of the files and records in this matter, and conversations with Defendant.

3. On or about October 13, 2006, Tonya Oaks and Isha Western filed Plaintiffs' First Amended Original Complaint in the United States District Court for the Southern District of Texas. A true and correct copy of the Complaint is annexed hereto as **Exhibit A**.

4. A true and correct copy of the Docket Report for this case is annexed hereto as **Exhibit B**.

5. A true and correct copy of Defendant's July 27, 2007 correspondence requesting this case be transferred from New York City to White Plains is annexed hereto as **Exhibit C**.

6. A true and correct copy of the Court's September 21, 2007 Order Advising That Case Will Be Dismissed For Failure To Appear is annexed hereto as **Exhibit D**.

7. A true and correct copy of the transcript for the October 5, 2007 initial pre-trial conference is annexed hereto as **Exhibit E**.

8. Copies of all unreported decisions cited in Defendant's Memorandum of Law are annexed hereto as **Exhibit F**.

9. On or about December 15, 2007, I spoke to John A. Craner, Esq., an attorney who considered entering a Notice of Appearance on behalf of Plaintiff Isha Western.

10. Mr. Craner provided me the following current address for Ms. Western: 2081 Fontainebleu Drive, Conyers, Georgia 30094.

11. Mr. Craner also informed me he sent Plaintiff via Certified Mail a copy of the Court's September 21, 2007 Order annexed hereto as Exhibit D.

12. Ameripath's local office where Plaintiff was assigned is located in Port Chester, New York.

13. To the best of Defendant's knowledge, potential witnesses identified by Plaintiff in her Complaint either currently work or worked at the Port Chester office.

14. I have read the above thirteen (13) numbered paragraphs and know them to be true to my own knowledge or upon information and belief.

WHEREFORE, for the reasons set forth in Defendant's accompanying Memorandum of Law, Defendant respectfully requests that this Court grant its motion in its entirety.



MICHAEL A. FRANKEL

Dated: October 19, 2007
White Plains, New York

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2007 I served a true and correct copy of the foregoing Affirmation via Federal Express Overnight Delivery and First Class U.S. Mail, postage pre-paid, upon Plaintiff, Isha Western, at her current address:

Ms. Isha Western
2081 Fontainebleu Drive
Conyers, Georgia 30094



Michael A. Frankel